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October 22, 2020

TO: DEQ-DWR-Wetlands-Public Listserv

FROM: Danny Smith, Director, Division of Water Resources

RE: Proposed Changes to the NC Wetland Regulatory Program in response to the new Navigable Waters Protection Rule: Definition of "Waters of the United States (WOTUS)"

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On April 21, 2020, the U.S. Environmental Protection Agency (EPA) and the Department of the Army [published the Navigable Waters Protection Rule in the Federal Register](#) to finalize a revised definition of "waters of the United States" under the Clean Water Act ("Federal Rule"). The new Federal Rule became effective on June 22, 2020. As a result of the new Federal Rule, certain wetlands are no longer subject to federal Clean Water Act jurisdiction. These wetlands remain protected by the State's Wetland Standards (15A NCAC 02B .0231), but, as a result of the new Federal Rule, the State 401 permitting mechanism is no longer available to authorize impacts. Impacts to these wetlands cannot be authorized by the state's existing Isolated Wetlands permitting program (15A NCAC 02H .1300, et. seq.) because they are not within the scope of those rules. Impacts to these wetlands, which formerly relied on the Federal Rule for a permitting pathway, are prohibited until a state permitting process is in place.

To provide a regulatory mechanism to authorize impacts to wetlands that are no longer federally jurisdictional and to provide regulatory certainty, the Division will be proposing temporary rulemaking at the November [Environmental Management Commission](#) meeting. The proposed temporary rules would clarify the scope of the existing Isolated Wetlands Rules (15A NCAC 02H .1300, et. seq.) and include a new section relating to wetlands that are no longer federally jurisdictional. The proposed new section would mirror the substance, structure, and permitting requirements of the existing Isolated Wetlands Rules. The Division is not proposing any changes to "exempted" features (man-made ponds, stormwater/wastewater measures, ditches). Temporary rulemaking includes a public hearing and public comment period. The Division also plans to initiate permanent rulemaking (to take effect once the temporary rules expire), which will include a stakeholder process.

This notice is available electronically at <https://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/401-wetlands-buffer-permits/401-public-notices>.



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